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**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

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| In the Matter of | ) | |
| | ) | |
| Calling Party Pays Service Option | ) | WT Docket No. 97-207 |
| in the Commercial Mobile Radio Service | ) | |

# REPLY COMMENTS OF BAY SPRINGS TELEPHONE COMPANY, CROCKETT TELEPHONE COMPANY, NATIONAL TELEPHONE OF ALABAMA, INC., PEOPLES TELEPHONE COMPANY, INC., ROANOKE TELEPHONE CO., INC., AND WEST TENNESSEE TELEPHONE CO., INC.

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## SUMMARY

The Rural Telephone Companies, a group of small rural telephone companies which provide local exchange and exchange access service, vehemently oppose the proposal to impose billing and collection service requirements upon local exchange carriers ("LECs") for the purpose of implementing Calling Party Pays ("CPP") service.

As explained in greater detail below, the existence of reciprocal compensation rules ensures that CMRS providers are adequately compensated for the costs they incur in terminating calls originating on the LEC's network. Moreover, to the extent that CMRS carriers seek to recover more than these costs before allowing their customers to receive calls, it would be inequitable for CMRS carriers to be permitted to so inflate their profits at the expense of wireline subscribers. Wirelines subscribers have already paid their originating LEC for the ability to place and receive local calls. Rather than forcing wireline subscribers to subsidize a wireless service through implementation of CPP, or imposing a fee on CMRS subscribers in the name of terminating costs that have already been recovered by CMRS providers, CMRS carriers should consider simply eliminating the per minute charge for terminating calls.

Contrary to the claims of some commenting parties, the Commission does not have the authority to require LECs to provide intrastate billing and collection services to CMRS carriers. Section 332(c)(1)(B) authorizes the Commission to mandate only the physical link for the connection of networks.[1] There exists no indication that in promulgating this statute, Congress intended to involve the Commission in negotiating intrastate billing and collection service agreements.

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[1] See Competitive Telecommunications Ass'n v. FCC, 117 F.3d 1068, 1071-2 (8th Cir. 1997).

Section 332(c)(3)(A), which grants the Commission authority to regulate CMRS market entry and rates, applies only to CMRS carriers and does not give the Commission authority to order LECs to provide intrastate billing and collection services. Even assuming arguendo that §332(c)(3)(A) does apply to LECs, the statute grants the Commission authority to regulate only CMRS market entry and rates; all "other terms and conditions" are regulated by the state. LEC provision of billing and collection service clearly concerns neither CMRS market entry nor rates, and therefore falls into the "other terms and conditions" category of §332(c)(3)(A). As such, the Commission does not have jurisdiction to regulate this intrastate service.

In addition, billing and collection service is not a network element. Thus, the Commission may not order incumbent LECs to provide this service. Even assuming arguendo that billing and collection service could be considered in the context of network elements, it would consist of *multiple* elements (e.g., recording, bill preparation, etc.). Accordingly, the provision of this service would involve the combination of unbundled network elements; ILECs are not, however, required to recombine unbundled network elements.[2]

Although proponents of CPP urge the Commission to exercise its ancillary jurisdiction under Title I of the Communications Act of 1934, as amended, to re-regulate LEC provision of intrastate billing and collection services, it is clear that the competition currently present in the market for billing and collection services makes such action unnecessary.

Finally, implementation of CPP service would cause LECs to lose customer goodwill, and would place an enormous burden on small and rural LECs. Accordingly, it is clear that mandating the implementation of CPP would violate the public interest.

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[2] Iowa Utilities Board v. FCC, 120 F. 3d 753, 813, (8th Cir. 1997).

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Bay Springs Telephone Company, Inc., Crockett Telephone Company, National Telephone of Alabama, Inc., Peoples Telephone Company, Inc., Roanoke Telephone Co., Inc., and West Tennessee Telephone Co., Inc., (collectively referred to herein as the "Rural Telephone Companies") by and through their attorneys, hereby offer these reply comments addressing arguments made in response to the Commission's October 23, 1997 Notice of Inquiry ("NOI") concerning the Calling Party Pays ("CPP") service plan.[3]

## I. INTRODUCTION.

The Rural Telephone Companies strongly oppose the proposal to force small local exchange carriers (LECs) to provide billing and collection services for the purpose of implementing CPP service. As explained in greater detail below, implementation of CPP service will cause customer confusion and will not serve the public interest. Furthermore, the Commission lacks authority to require LECs to provide the intrastate billing and collection

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[3] In the Matter of Calling Party Pays Service Option in the Commercial Mobile Radio Services, *Notice of Inquiry*, WT Docket No. 97-207, FCC 97-341 (rel. October 23, 1997).

services necessary to implement CPP. Accordingly, the Rural Telephone Companies vehemently oppose any proposal to mandate LEC provision of the CPP service option.

## II. ARGUMENT.

In the NOI, the Commission questions the necessity of implementing CPP service, and the extent to which it has the authority to require LECs to provide the billing and collection services necessary to implement CPP. As demonstrated below, it is clear that any additional amount that commercial mobile radio services ("CMRS") providers want to charge for a wireless subscriber's ability to receive calls that goes beyond the termination costs recovered through reciprocal compensation should be charged to the called party, rather than to the calling party through CPP. It is equally clear that the Commission does not have the authority to require LECs to provide the intrastate billing and collection services necessary to implement CPP, and that imposing such a requirement would violate the public interest.

### A. Additional Amounts that CMRS Providers Charge Beyond the Terminating Costs Recovered Through Reciprocal Compensation Should be the Obligation of the CMRS Subscriber

In arguing that the calling party, rather than the called party, should be obligated to pay the costs associated with terminating calls to the wireless network, proponents of CPP service assert that the called party in a land-to-land call incurs no charge for receiving a call. Thus, these parties reason, the called party in a CMRS call must be granted the same freedom from charges for received calls in order to ensure that CMRS is competitively equivalent to landline service.[4] This specious assertion fails for several reasons.

[4] See, e.g. Omnipoint Communications, Inc. Comments at 19; Personal Communications Industry Association Comments at 11.

First, it incorrectly characterizes the charges assessed pursuant to CPP as a payment to recover terminating costs. The proposed CPP charges are clearly not necessary to recover the CMRS carriers' cost of terminating calls, since these costs are paid by the LEC pursuant to reciprocal compensation rules.[5] These rules require LECs to establish reciprocal compensation arrangements with carriers, including CMRS providers, for the transport and termination of traffic. Thus, reciprocal compensation ensures that CMRS providers are adequately compensated for the costs they incur in terminating calls originating on the LEC's network. Since originating LECs are statutorily bound to remit payment to cover the termination costs incurred by CMRS providers, the revenue derived from the CPP scheme would obviously not be used for this purpose.[6] Instead, it is clear that the proposed CPP charges would constitute premium payments designed solely to increase the net profits of CMRS providers.

Second, wireline subscribers are in fact charged by their LECs for incoming calls. Wireline subscribers pay a monthly fee for local exchange service to their LEC for the ability to place and receive telephone calls. A call placed to a wireline subscriber is terminated by a LEC, not because the *calling* party paid a fee to the terminating LEC, but rather because the *called* party paid its bill for local telephone service to the terminating LEC in order to receive telephone calls. The only charge to the *calling* party is paid to the originating LEC, and is for the

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[5] 47 C.F.R. §§ 51.701-51.717.

[6] The Rural Telephone Companies reiterate the argument contained in their initial comments that, to the extent CPP is characterized as a method of recovering costs incurred by CMRS carriers in terminating calls, it would constitute double recovery and windfall profit, since CMRS carriers are already compensated for termination costs pursuant to reciprocal compensation agreements entered into with LECs. Rural Telephone Company Comments at 3-5.

placement of local calls as part of the local exchange service provided by the originating LEC. Whether placing or receiving a call, the wireline subscriber deals only with its own LEC, and is not required to pay anything to the LEC of the other party to the telephone call. Thus, in order to truly emulate local wireline service, CMRS providers should continue to require their wireless subscribers to pay for the ability to place, and receive, telephone calls on their wireless handset.

Implementation of CPP would cause the inequitable result of forcing wireline subscribers to subsidize a wireless service. It would force a wireline subscriber calling a wireless subscriber to pay not only its own local telephone service bill, which already covers the placement and receipt of calls, but also charges for the wireless subscriber to receive calls. The wireless subscriber, on the other hand, would be required to pay only charges for placing calls. This outcome is clearly unfair and the CPP plan must, accordingly, be rejected.[7]

Finally, the Rural Telephone Companies do not object to allowing LECs to elect to offer CPP on a voluntary basis. Market conditions may be such that these LECs' customers do not object to being billed an additional amount whenever they call a wireless service subscriber. We do not share that view of the market.

More important, we see serious problems being created by having the FCC require us to charge our customers additional sums at the behest of CMRS providers. Proponents for mandatory CPP are proposing to raise local wireline telephone rates to subsidize CMRS. CMRS

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[7] The ability to receive calls is charged by CMRS carriers on a time-sensitive basis which includes airtime charges, rather than on a flat-rate basis. This fact does not affect the analysis of what party should be obligated to pay for calls terminated to the wireless network. Industry custom in the landline context makes clear that a subscriber must pay to both place and receive calls. Thus, wireless subscribers, rather than wireline subscribers, should be required to pay CMRS providers for receiving calls at wireless handsets.

providers should simply eliminate the per minute charge for terminating calls if these providers believe such charges impose too big of a burden on wireless customers. That solution makes more sense than requiring LECs to raise local charges to their wireline customers.

### B. The Commission May Not Require LECs to Provide Calling Party Pays Service Since the Commission Does Not Have Jurisdiction Over Intrastate Billing and Collection Issues

In the NOI, the Commission requests comment regarding the extent to which it has authority under the Act to require LECs to establish CPP arrangements with CMRS providers. Several commenting parties assert that the Act does in fact grant the Commission authority to require LECs to provide the billing and collection services necessary to provide CPP service.[8] The arguments made by these commenting parties lack merit, however, and must therefore be rejected.

#### 1. Section 332 Does not Grant the Commission Authority to Require LECs to Provide Intrastate Billing and Collection Services to CMRS Providers

Commenting parties assert that §332 authorizes the Commission to order LECs to provide intrastate billing and collection service for purposes of implementing CPP.[9] In order to support this claim, advocates of this position rely on §332(c)(1)(B), which authorizes the Commission to "order a common carrier to establish physical connections" with CMRS carriers. This authority to mandate LEC/CMRS interconnection, they claim, also enables the Commission

[8] See, e.g., Centennial Cellular Corp. 2-14; Air Touch Communications, Inc. Comments at 18-25; Cellular Telecommunications Industry Association Comments at 12-24.

[9] See, e.g., Centennial Comments at 2-14.

to order LECs to provide the intrastate billing and collection services necessary for CMRS carriers to provide CPP.[10] This claim is clearly erroneous.

The Commission's authority to order interconnection is designed to ensure the exchange of traffic between CMRS and LEC networks and their physical connection; there exists no indication that Congress intended to involve the Commission in negotiating intrastate billing and collection service agreements. This statutory construction is confirmed by §251(c)(2) of the Act,[11] which does not include the provision of billing and collection services as a component of the incumbent LECs' interconnection obligation, and by §332(c)(1)(B) itself, which makes no mention of the Commission's authority to regulate billing and collection services as part of the interconnection requirement. Furthermore, the Eighth Circuit has construed "interconnection" as meaning the physical link for the connection of networks.[12]

Parties in favor of CPP also rely on §332(c)(3)(A), which provides that the Commission, rather than the State or local government, may regulate the entry of and rates charged by CMRS providers.[13] This provision applies only to CMRS carriers, however, and does not give the Commission authority to order LECs to provide intrastate billing and collection services or to

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[10] 47 C.F.R. §332(c)(1)(B).

[11] 47 U.S.C. §251(c)(2).

[12] Competitive Telecommunications Ass'n v. FCC, 117 F.3d at 1071-2.

[13] 47 U.S.C. §332(c)(3)(A).

regulate the rates that LECs charge for such an intrastate service. Moreover, assuming arguendo that §332(c)(3)(A) does apply to LECs in this instance, it is clear that intrastate billing and collection service is regulated by the State, rather than by the Commission.

Section 332(c)(3)(A) grants the Commission authority to regulate CMRS market entry and rates; all "other terms and conditions" are regulated by the State. LEC provision of billing and collection service clearly concerns neither CMRS market entry nor rates, and therefore falls into the "other terms and conditions" category of §332(c)(3)(A). The court in Mountain Solutions, Inc. v. State Corp. Comm'n of Kansas, 966 F.Supp. 1043, 1048 (D. Kan. 1997), affirmed this conclusion. It relied on legislative history to determine that "Congress did not intend to remove all state regulatory authority ," and that "by 'terms and conditions,' [Congress] intends to include such matters as customer billing information . . ."[14] Thus, to the extent §332(c)(3)(A) applies to LEC provision of billing and collection service for the purpose of implementing CPP, it grants jurisdiction to the State, rather than to the Commission. Accordingly, this provision does not grant the Commission authority to mandate that LECs provide the intrastate billing and collection services necessary for CMRS carriers to provide CPP

### 2. The Commission May Not Require LECs to Provide Billing and Collection Service as an Unbundled Network Element

Section 251(c)(3) of the Act requires incumbent LECs to provide access to unbundled network elements.[15] Some commenting parties claim that the billing and collection service

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[14] Mountain Solutions, Inc. v. State Corp. Comm'n of Kansas, 966 F.Supp. at 1048, citing H.R.Rep.No. 103-111, at 261 (1993) reprinted in 1993 U.S.C.C.A.N. 378, 588.

[15] 47 U.S.C. § 251(c)(3).

required to implement CPP constitutes an unbundled network element which LECs must provide on a non-discriminatory basis pursuant to §251(c)(3).[16] As an initial matter, it is important to note that §251(f)(1)(A) exempts rural telephone companies from the unbundling requirements of §251(c)(3) until such time that they receive a bona fide request for network elements and the State commission determines that such request is not unduly economically burdensome, is technically feasible, and is consistent with universal service principles.[17] In any event, it is clear that billing and collection services provided by LECs do not by themselves constitute an unbundled network element, but rather are provided only in connection with a true unbundled network element.

The Act defines "network element" as a "facility or equipment used in the provision of a telecommunications service."[18] It further provides that the term includes " . . . features, functions, and capabilities that are provided *by means of such facility or equipment* . . . including . . . billing and collection."[19] Based on this definition, the Commission has determined that §251(c)(3) requires incumbent LECs to provide access to operations service support system functions necessary for "*billing of unbundled network elements*."[20] It has observed that access to

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[16] See, e.g., Vanguard Cellular Comments at 4-5.

[17] 47 U.S.C. § 251(f)(1)(A)

[18] 47 U.S.C. § 153(29).

[19] Id.

[20] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *First Report and Order*, 11 FCC Rcd. 15499, 15767 (1996) (emphasis added).

information contained in the operations support systems functions (such as billing information) "could be viewed as a 'term or condition' of unbundling *other network elements*."[21]

Accordingly, it is clear that the billing and collection service necessary to implement CPP cannot stand alone as a network element; a LEC can be required to provide CPP billing and collection service only in connection with CMRS providers' use of unbundled network elements purchased from incumbent LECs. CMRS providers do not, however, purchase any unbundled network elements from incumbent LECs in order to terminate calls placed by wireline subscribers to the wireless network. Since CMRS providers do not use any unbundled network elements in order to terminate calls, and since billing and collection service cannot stand alone as an unbundled network element, §251(c)(3) does not require incumbent LECs to provide the intrastate billing and collection services required to implement CPP.

Assuming arguendo that billing and collection were network elements, they would be multiple elements (e.g., recording, bill preparation, collection). A provider could, for example, elect to purchase only recordings. Hence, the provision of billing and collection is at best the combination of unbundled network elements. Under Iowa Utilities Boards,[22] ILECs are not required to recombine unbundled network elements for requesting carriers. Such carriers must rebundle such elements themselves.

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[21] Id. at 15763 (emphasis added).

[22] Iowa Utilities Board v. FCC, 120 F.3d at 813.

### 3. No Other Basis Exists for the Commission to Exercise Jurisdiction Over CPP Service

In the Billing and Collection Detariffing Order, the Commission detariffed interstate billing and collection services, concluding that the market for billing services was sufficiently competitive and that no purpose would be served by continuing to regulate interstate billing and collection services.[23] Proponents of CPP, however, urge the Commission to exercise its ancillary jurisdiction under Title I of the Act to regulate LEC provision of the intrastate billing and collection services required to implement CPP.[24] It is clear, however, that the market for billing and collection services is currently open to competition, and therefore that re-regulation of billing and collection services is unnecessary. The billing name and address information CMRS carriers require in order to provide CPP service is provided by LECs as a tariffed service offering; CMRS carriers may collect this information and bill the wireline customers who placed calls to the wireless network, or retain a third party clearinghouse to accomplish this task on their behalf. Moreover, action by the Commission to re-regulate billing and collection services is contrary to the deregulatory policy underlying the Telecommunications Act of 1996.

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[23] In the Matter of Detariffing of Billing and Collection Services, *Report and Order*, 102 FCC 2d 1150, 1169-1171 (1986). The Commission also determined that billing and collection was not a common carrier service, and that it does not employ wire or radio facilities. Id at 1167-1169. Accordingly, the Commission must reject Omnipoint Communications's assertion that the intrastate billing and collection service required to implement CPP is a common carrier service (Omnipoint Comments at 12-14), and the Personal Communication Industry's argument that even the LEC component of CPP service constitutes mobile service which may be regulated under § 332 (PCIA Comments at 3-4).

[24] See, e.g., Omnipoint Comments at 14-15.

One might understand an argument supporting mandatory billing and collection by LECs if LECs controlled the only means for a CMRS providers to bill the CMRS provider's customers. However, the CMRS providers do not need LEC assistance to bill the CMRS customers. CMRS customers have been billed by wireless providers for years. Rather, the CMRS providers want LEC assistance to bill LEC customers. We object strongly to this request. Moreover, we believe our customers would object even stronger to paying more in order to inflate the profits of CMRS operators.

### C. Implementation of CPP Regulations Would Cause Significant Harm to LECs and Would Therefore Violate the Public Interest

As the Rural Telephone Companies explained in their initial Comments, implementation of the CPP service plan would cause customer confusion regarding the identity of the party assessing CMRS-related charges. Wireline subscribers may believe that the LECs, rather than the CMRS providers are responsible for creating the new charges which they are being required to pay. Wireline service customers might also become annoyed by the inconvenience and delay produced by the suggested intercept message. As a result, LECs are likely to suffer a significant loss of customer goodwill. For this reason, the Rural Telephone Companies strongly oppose the proposed implementation of CPP, and in particular object to Omnipoint's demand that CMRS-related charges be integrated into the local service portion of the wireline service subscriber's bill, rather than being contained in a separate section of the bill.[25]

In addition to loss of customer goodwill, implementation of CPP service would place an enormous burden on small and rural LECs which do not currently possess the technical

[25] Omnipoint Comments at 10-11.

capability to pass the billing information required to implement CPP service. Likewise, the LECs would be significantly burdened by requirements that they enforce collection of CPP-related charges, incur liability for uncollectibles, or be required to disconnect local wireline service for non-payment of CPP-related charges. Accordingly, it is clear that mandating the implementation of CPP would violate the public interest.

## III. CONCLUSION.

For all of the foregoing reasons, the Rural Telephone Companies respectfully urge the Commission to reject all proposals to require LECs to provide billing and collection services in connection with CPP service.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of January, 1998, I caused copies of Reply Comments of Bay Springs Telephone Company, Crockett Telephone Company, National Telephone of Alabama, Inc., Peoples Telephone Company, Inc., Roanoke Telephone Co., Inc. and West Tennessee Telephone Co., Inc. To be served upon the parties listed below via first-class mail postage pre-paid or by hand delivery (as indicated by asterisk):

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